Court Holds People Supreme Tribunal

Amidon, in Holding North Dakota Program Constitutional, Declares Too Many Decisions Defeated Popular Will

By Special Correspondent

THE constitutionality of the North Dakota industrial program was sustained by Judge C. F. Amidon of the United States district court at Fargo when, in a sweeping decision, he dismissed the suit of the 42 so-called "taxpayers" who asked for an injunction to render inoperative the industrial program. The court ruled against the plaintiffs on the essential points and sustained the right of the people to go into business for themselves.

The suit was brought by 42 taxpayers. They charged in the complaint that the use of state funds and the levying of taxes to establish the state bank and state-owned mills, elevators and packing houses is a use of the taxing power for a private purpose, and when they are compelled to pay taxes for such a purpose they are deprived of their property without due process of law. Defendants moved to dismiss the bill on the ground that the court was without jurisdiction.

Two elements were essential to jurisdiction, the court held:

1. That the amount in controversy in the suit exceeds $3,000.

2. That the bill makes out a case arising under the federal Constitution.

The court ruled against the plaintiff on both grounds.

The question whether the amount in controversy is over $3,000 is a question of practice, Judge Amidon said. "Plaintiffs claimed that the alleged bond issue was the amount in controversy. The amount of taxes which the plaintiffs would be compelled to pay is the amount in controversy," the decision held, "and many decisions of the supreme court sustain this ruling. As the bill fails to make any showing as to the plaintiff's personal interest in the suit, the court rules that there is a failure to show the first ground of jurisdiction."

On the question of whether the program of the League involves a use of the taxing power for a private purpose the court holds the question of what constitutes a public purpose is primarily for the state to decide and that this is especially true when the people of the state have repeatedly amended their constitution, as the people of this state have done, to authorize the taxes complained of.

"The only cases in which laws have been held invalid by the United States supreme court are those in which cities have issued bonds as a mere gratuity to private interests to induce them to locate in the city. Whenever bonds have been issued to establish industries to be owned by the state or city, as North Dakota proposes to do, such a use of the taxing power has always been sustained by the supreme court," says the court. "The complaint is dismissed upon both grounds, with costs."

JURISDICTION OF COURT NOT SHOWN IN BILL

The decision says, in part:

"Plaintiffs must show a personal interest amounting to $3,000 in order to give this court jurisdiction, and as no such showing is made in the present bill, the jurisdiction of the court as a federal court fails.

"The other jurisdictional element presents the question whether the bill shows a case arising under the fourteenth amendment. That depends on whether the purpose for which the laws here assailed seek to use the taxing power is private or public. When a state enters a new field of taxation, as North Dakota has in these laws, that question is always raised. It was urged against laws to establish public schools, and publicly owned water, gas and electric plants, with the same vehemence as it is now urged against the present laws. The line of legislative power has been steadily advanced as society has come to believe increasingly that its welfare can best be promoted by public as distinguished from private ownership of certain business enterprises. Laws which at one time were held invalid have at a later period been sustained by the same court. No judge can investigate judicial decisions rendered during the past 10 years without being impressed with the rapid extension of state activity into fields that were formerly private. The twilight zone that separates here permissible from forbidden state action is broad. Business which will seem to one court to be public will seem to another to be private.

"What may be done by the state to protect its people and promote their welfare, can not be declared by a prior reasoning. New evils arise as the result of changing conditions. If the state remains static while the evils that afflict society are changing and dynamic, the state soon becomes wholly inadequate to protect the public. The state must be as free to change its remedies as the evils that cause human suffering are to change their forms."

Regarding the constitutionality of the law, Judge Amidon cites the case of Lowell vs. Boston, in which John A. Lowell and nine other taxpayers brought suit to restrain the city from issuing $20,000,000 bonds, as authorized by the state, for a fund to make loans to parties on mortgages to aid in restoring the part of the city that had been destroyed by fire in 1872. The suit was brought under the Massachusetts constitution, which contains a provision like that of the fourteenth amendment of the federal Constitution, protecting every individual "in the enjoyment of his life, liberty and property, according to law." The court upheld the plaintiff's contention, and it has been the precedent for many other similar decisions since that time, until the people of the state passed an amendment sweeping away this constitution.

"The decision had stood for more than half a century as an authority supporting scores of decisions nullifying laws to correct evils from which men, women and children are suffering," the decision says, "and furnishing reasons to even more congresses, legislatures and city councils why other laws should not be passed to correct such evils. And now that the real supreme tribunal of Massachusetts, the people of that commonwealth, has swept away all these judicial precedents in that state, what do we say has happened? This: 'The court was right all the time; but the people have now amended their constitution and granted the legislature power to do what the court said they couldn't do before, and so the legislature may hereafter enact needful laws.' But does that state the real truth? I think not. Is it not more true to say that the people of Massachusetts have corrected, if not rebuked, the judges of their supreme judicial court? Have not they really said to their judges: 'You have been wrong all this half century. We never intended those general words to mean what you have been saying they mean and we wish you wouldn't use them any more to protect practices that have been proven to be economically, morally and legally unsound and nullify laws passed for their correction'? Is not that the real interpretation of what has happened, not only in Massachusetts but in the adoption in nearly every state of the Union in the last 15 years of constitutional amendments to correct decisions made under the general provisions which forbid a deprivation of life, liberty or property without due process of law?

RESISTS ABUSE OF POWER UNDER 14TH AMENDMENT

"No court has been so insistent and emphatic as the supreme court of the United States against the abuse of the power to declare laws unconstitutional under the general language of the fourteenth amendment.

"1. It has restated the scope of the police power. Prior to 1885 that power was restricted by American courts to the public safety, health and morals. The supreme court holds that it embraces also laws intended to promote public prosperity and general welfare.

"2. The courts may not concern themselves with the policy of legislation or its economic wisdom or folly. Those are considerations belonging exclusively to the legislature.

"3. A law can not be set aside 'because the judiciary may be of the opinion that the act will fail of its purpose or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government.'

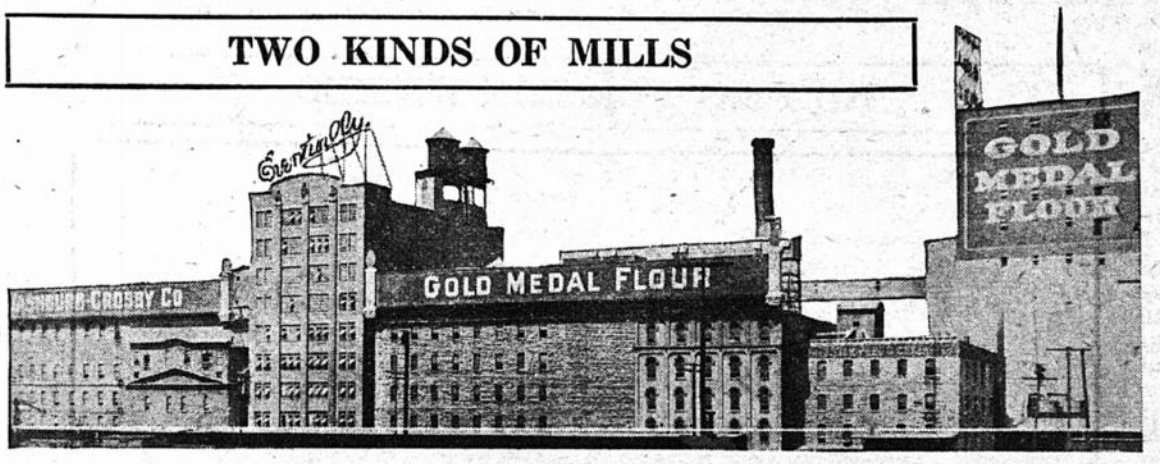
"In the light of these established doctrines let us look at some of the general facts that condition this case.

"The people of North Dakota are farmers, many of them pioneers. Their life has been intensely individual. They have never been combined in corporate or other business organizations to train them in their common interests or promote their general welfare. In the main they have made their purchases and sold their products as individuals. Nearly all their livestock and grain is shipped to terminal markets at St. Paul, Minneapolis and Duluth. There these products pass into the hands of large commission houses, elevator and milling companies and livestock concerns.

"These interests are combined not only in corporations, chambers of commerce, boards of trade and interlocking directorates but in the millions of understandings which arise among men having common interests and living through long terms of years in the daily intercourse of great cities. These common understandings need not be embodied in articles of incorporation or trust agreements. They may be as intangible as the ancient 'powers of the air.' But they are as potent in the economic world as those ancient powers were thought to be in the affairs of men. It is the potency of this unity of life of men dwelling together in daily intercourse that has caused all nations thus far to be governed by cities.

"As North Dakota has become more thickly settled and the means of intercourse have increased the evils of the existing marketing system have been better understood. No single factor has contributed as much to that result as the scientific investigations of the state's agricultural college and the federal experts connected with that institution. That work has been going on for a generation and has been carried to the homes of the state by extension workers, the press and the political discussion of repeated political campaigns. The people have thus come to believe that the evils

TWO KINDS OF MILLS



When North Dakota begins to manufacture its own flour in its own mills from wheat in its own elevators and grown on its own soil, it will be asked to prove that the people are as efficient as a private corporation. The mill will be judged by the standards of the finest, largest, best-equipped mills in America; its product will be tested in comparison with that of these mills, such as the Washburn-Crosby plant, shown above. The people of North Dakota do not fear the test. They will use the most modern methods and turn out flour equal to any in the world, for the ideal of democracy will be the motive force in place of the ideal of profit.